

VALTECH, LLC,)	
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Plaintiff,)	
)	Civil Action No.: 1:14-cv-00134
v.)	
)	TRIAL BY JURY DEMANDED
)	
)	
18TH AVENUE TOYS LTD. and)	
TOYS 4 USA INC.,)	
)	
)	
Defendants.)	
)	

Plaintiff, Valtech, LLC (“Valtech”), alleges the following in support of its Second Amended Complaint against Defendants, 18th Avenue Toys Ltd. and Toys 4 USA Inc. (collectively, “Defendants”), which is filed in accordance with the Court’s order dated November 25, 2014 (Dkt. No. 56):

1. This is an action brought by Valtech arising under the trademark laws of the United States. Valtech seeks an injunction and damages against Defendants for infringement of Valtech's federal trade-dress rights.

2. Plaintiff Valtech, LLC, is an Illinois limited liability company having its principal place of business at 6200 River Road, Hodgkins, Illinois 60525.

3. On information and belief, Defendant 18th Avenue Toys Ltd. (“18ATL”) is a New York corporation having its principal place of business at 5506 18th Avenue, Brooklyn, New York 11204.

4. On information and belief, Defendant Toys 4 USA Inc. (“Toys 4 USA”) is a New York corporation having its principal place of business at 1172 59th Street, Brooklyn, New York 11219.

JURISDICTION

5. This Court has personal jurisdiction over Defendants because they have both sold the accused infringing products to customers in Illinois.

6. This Court has subject matter jurisdiction over Valtech’s federal claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

7. Venue in this Court is based upon 28 U.S.C. § 1391(b)(2), (3).

FACTUAL BACKGROUND

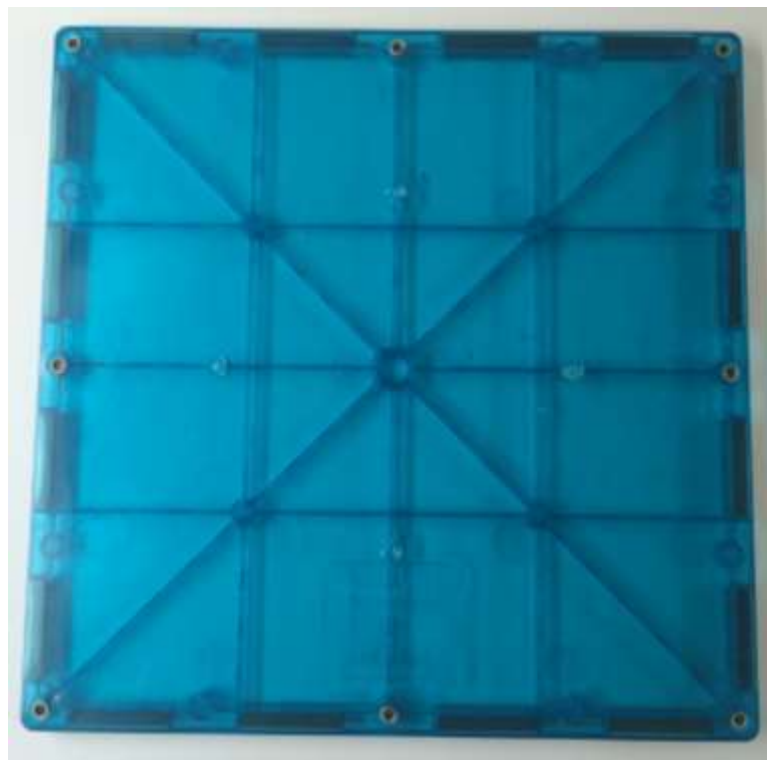
8. In 1997, Valtech introduced a line of opaque, plastic building blocks in various shapes and colors with magnetic strips along their edges under the brand Magna-Tiles®. Valtech sells these products under the name “Magna-Tiles® Solid Colors.” These products are sold in sets containing varying numbers of blocks in assorted shapes and colors, and in sets containing multiple pieces of a single type of block.

9. In 2002, Valtech expanded its Magna-Tiles® brand to include *transparent*, plastic building blocks in various shapes and colors with magnetic strips along their edges, which are sold under the name “Magna-Tiles® Clear Colors.” These products are also sold in sets containing varying numbers of blocks in assorted shapes and colors and in sets containing multiple pieces of a single type of block.

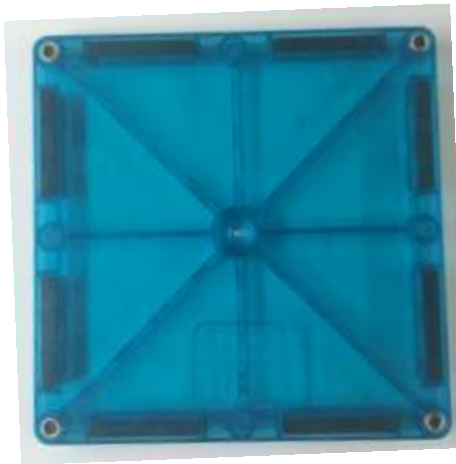
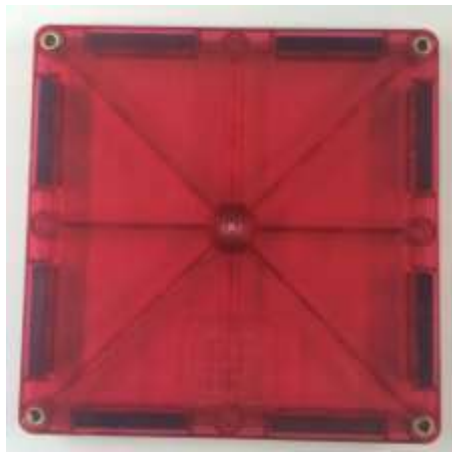
10. Rudolph Valenta, the owner of Valtech, owns a federal registration for the mark MAGNA-TILES for use in association with manipulative toys, namely, blocks and puzzles. (U.S. Reg. No. 2,654,320.)

11. Valtech sells its Magna-Tiles® Clear Colors in at least the following shapes and sizes (note: these blocks are sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

Magna-Tiles® 6" x 6" Square (shown in blue)



Magna-Tiles® 3" x 3" Square (shown in red and blue)



Magna-Tiles® 2 3/4" x 2 3/4" x 3 3/4" Right Triangle (shown in green and purple)



Magna-Tiles® 2 3/4" x 2 3/4" x 2 3/4" Equilateral Triangle (shown in orange)



Magna-Tiles® 5 ½" x 5 ½" x 2 ¾" Isosceles Triangle (shown in red)



12. As seen above, each Magna-Tiles® Clear Colors block features a unique and stylish interior lattice design that is visible through the transparent surface of the block. This distinctive lattice design is used in all of the Magna-Tiles® blocks, although the exact structure of the lattice differs depending on the shape of a given block. Each Magna-Tiles® Clear Colors block also features smooth, single-planar surfaces and corner rivets. These features give the Magna-Tiles® Clear Colors line a unique, integrated appearance.

13. The distinctive lattices, smooth, single-planar surfaces, corner rivets, and colorful, transparent nature of the Magna-Tiles® Clear Colors blocks are non-functional design elements that serve as indicators of origin for these products.

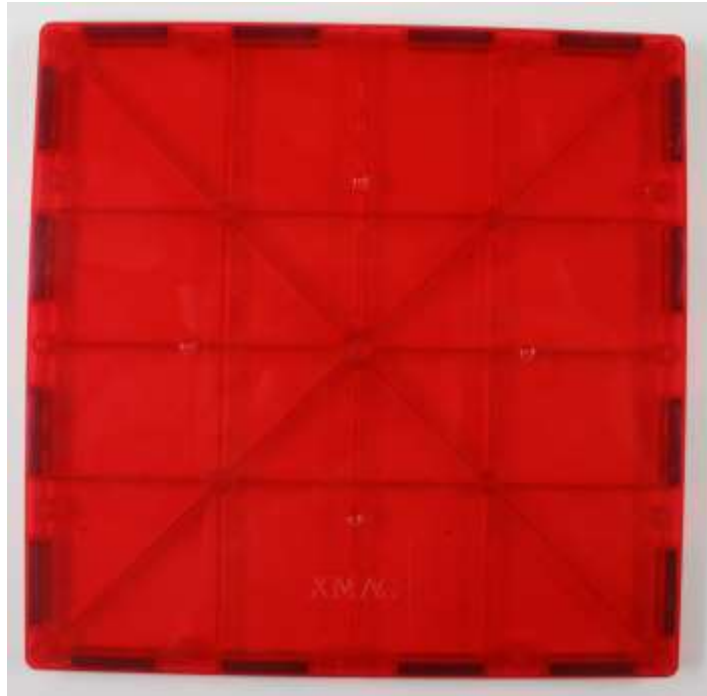
14. Valtech has invested a significant amount of time and money publicizing its Magna-Tiles® Clear Colors products over these many years, and has built up a substantial amount of goodwill in the product-design trade dress of its Magna-Tiles® Clear Colors.

15. As a result, consumers have come to identify Valtech as the source of the Magna-Tiles® Clear Colors products based on the unique appearance of the blocks. In particular, the public has come to identify Valtech as the source of magnetic blocks having the distinctive shapes, sizes, colors, transparency, corner rivets, smooth, single-planar surfaces, and interior lattice designs that characterize the Magna-Tiles® blocks.

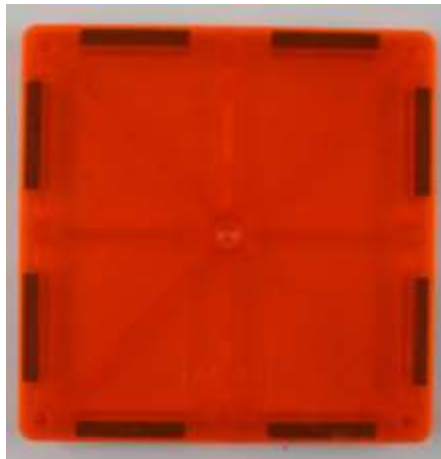
16. On information and belief, Defendants have sold and/or are selling transparent, colorful, plastic building blocks in various sizes and colors having smooth, single-planar surfaces with magnetic strips along their edges, some of which, on information and belief, have corner rivets, all under the brand names “Magnetic Stick N’ Stack” and “Playmags” (collectively, “Defendants’ Products”).

17. On information and belief, Defendants sell the Magnetic Stick N’ Stack blocks in at least the following shapes and sizes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

Magnetic Stick N' Stack 6" x 6" Square (shown in red)



Magnetic Stick N' Stack 3" x 3" Square (shown in orange)



Magnetic Stick N' Stack $2\frac{3}{4}$ " x $2\frac{3}{4}$ " x $3\frac{3}{4}$ " Right Triangle (shown in green)



Magnetic Stick N' Stack $2\frac{3}{4}$ " x $2\frac{3}{4}$ " x $2\frac{3}{4}$ " Equilateral Triangle (shown in blue and orange)

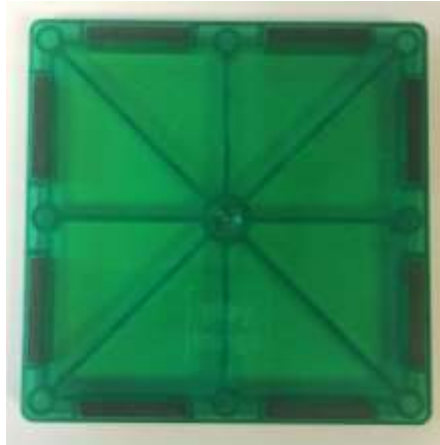


Magnetic Stick N' Stack $5\frac{1}{2}$ " x $5\frac{1}{2}$ " x $2\frac{3}{4}$ " Isosceles Triangle (shown in blue)



18. On information and belief, Defendants sell the Playmags blocks in at least the following shapes and sizes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale):

Playmags 3" x 3" Square (shown in green)



Playmags 2 3/4" x 2 3/4" x 2 3/4" Equilateral Triangle (shown in purple)




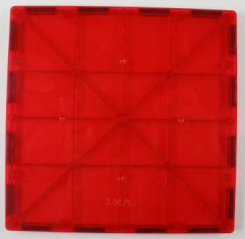
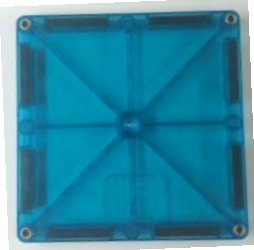

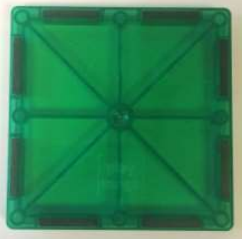





Playmags 5 ½" x 5 ½" x 2 ¾" Isosceles Triangle (shown in yellow)






19. On information and belief, Defendants' Products are sold in sets containing varying numbers of blocks in assorted shapes and colors.

20. As shown above, Defendants are selling transparent, colorful, magnetic blocks of the same size and shape as Valtech's Magna-Tiles® Clear Color blocks. Moreover, Defendants' Products contain an internal lattice design, and have smooth, single-planar surfaces, such that Defendants' Products are confusingly similar, and nearly identical, to the design of Valtech's Magna-Tiles® Clear Colors blocks.

21. To the ordinary observer, Defendants' Products look exactly like, and are likely to be mistaken for, Valtech's Magna-Tiles® Clear Colors blocks. When viewed side-by-side (ignoring differences in color), Defendants' Products are virtually indistinguishable from Valtech's Magna-Tiles® Clear Colors blocks, as shown below:

Magna-Tiles® (Plaintiff)	Magnetic Stick N' Stack (Defendants)	Playmags (Defendants)
		
		
		
		

Magna-Tiles® (Plaintiff)	Magnetic Stick N' Stack (Defendants)	Playmags (Defendants)
		

22. Other companies sell magnetic building blocks that lack these similarities with Valtech's Magna-Tiles® Clear Colors blocks. For example, on information and belief, the Excellerations™ Building Brilliance® Magnetic Shapes blocks, manufactured by Excelligence Learning Corporation of Monterey, California, are sold in at least the shapes and sizes depicted below. These blocks feature unique central designs that do not closely replicate the internal lattices present in the Magna-Tiles® Clear Colors blocks. The Excellerations™ blocks also do not have smooth, single-planar surfaces, but rather feature recessed central surfaces. Moreover, the Excellerations™ blocks do not have corner rivets, and are sold in certain unique shapes (note: these blocks may be sold in additional colors beyond those depicted below; dimensions are approximate; and the blocks are not shown to scale).

ExcellerationsTM 2 1/2" x 2 1/2" Square (shown in blue)



ExcellerationsTM 2 1/2" x 2 1/2" x 2 1/2" Equilateral Triangle (shown in yellow)



ExcellerationsTM 2 1/2" x 2 1/2" x 3 1/2" Right Triangle (shown in red)







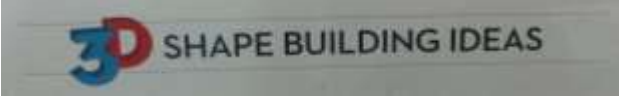

Excellerations™ 4 ¾" x 4 ¾" x 2 ½" Isosceles Triangle (shown in green)



Excellerations™ 5 ¼" x 2 ½" Double Square (shown in yellow)



23. In several respects, the packaging of the Playmags blocks sold by Defendant Toys 4 USA (“Playmags Packaging”) is identical, or at least confusingly similar, to the packaging used by Valtech for its Magna-Tiles® Clear Colors blocks (“Magna-Tiles® Packaging”), as shown below:

Magna-Tiles® Packaging (Plaintiff)	Playmags Packaging (Defendant)
	
<ul style="list-style-type: none"> • Magna-Tiles® Easily Connect for Hours of Open Ended Play • Create Cubes, Pyramids and Other Geometric Shapes • Be Creative with Imaginative, Hands-On Play to Build 3-D Structures • Develop Math, Science, Spatial and Tactile Skills 	<p>Playmags pieces easily connect for hours of open-ended play. Create cubes, pyramids and other geometric shapes. Explore creativity, math and spatial relations. Develops spatial, tactile, patterning and basic geometry skills. Kids love using their imagination to create magnetic structures.</p>
	
	

24. Defendants’ Products are sold in the same marketing channels as Valtech’s Magna-Tiles® blocks, including in toy stores, in general retail stores, and on the Internet.

25. On information and belief, Defendants designed Defendants' Products with knowledge of Valtech's Magna-Tiles® Clear Colors and with the intent to copy Valtech's trade dress to obtain consumer recognition and interest based upon the success and reputation of Valtech's Magna-Tiles® Clear Colors.

26. On information and belief, Toys 4 USA has sold and continues to sell Playmags products in packaging confusingly similar to the Magna-Tiles® Packaging with full knowledge of the Magna-Tiles® Packaging and with the intent to copy such trade dress and pass off its products as those of Valtech, and to create consumer confusion.

27. The advertising and sale of Defendants' Products are likely to cause confusion, mistake, and/or deception to customers and potential customers that Defendants' Products originate from the maker of the Magna-Tiles® Clear Colors, or that Defendants' Products are affiliated with, sold with the permission of, or approved, sponsored, or licensed by the maker of the Magna-Tiles® Clear Colors products.

28. In selling their Products, Defendants trade on the goodwill Valtech has established in the Magna-Tiles® Clear Colors trade dress and place the valuable reputation of the Magna-Tiles® Clear Colors line of products in the hands of third parties over whom Valtech has no control.

COUNT I:
PRODUCT-DESIGN TRADE-DRESS INFRINGEMENT
IN VIOLATION OF 15 U.S.C. § 1125(a)
AGAINST BOTH DEFENDANTS

29. Valtech hereby re-alleges and incorporates by reference the allegations of Paragraphs 1–28 of this Complaint as if set forth fully herein.

30. Valtech is the owner of trade dress rights in the Magna-Tiles® Clear Colors product design. This trade dress is non-functional.

31. Valtech's trade dress in the Magna-Tiles® Clear Colors product design has acquired secondary meaning among relevant consumers throughout the United States.

32. Valtech's trade dress in the Magna-Tiles® Clear Colors products has been and continues to be known throughout the United States as identifying and distinguishing Valtech's magnetic block products.

33. Defendants' conduct described above constitutes infringement of Valtech's rights in the Magna-Tiles® Clear Colors product-design trade dress and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

34. Valtech is informed and believes that Defendants' infringement of the Magna-Tiles® Clear Colors product-design trade dress has been willful.

35. Valtech has been and will continue to be irreparably harmed and damaged by Defendants' conduct, and Valtech lacks an adequate remedy at law to compensate for this harm and damages.

COUNT II:
PACKAGING TRADE-DRESS INFRINGEMENT
IN VIOLATION OF 15 U.S.C. § 1125(a)
AGAINST DEFENDANT TOYS 4 USA INC.

36. Valtech hereby re-alleges and incorporates by reference the allegations of Paragraphs 1–35 of this Complaint as if set forth fully herein.

37. Valtech is the owner of trade-dress rights in the Magna-Tiles® Packaging. This trade dress is non-functional.

38. The Magna-Tiles® Packaging is inherently distinctive as it comprises arbitrary design elements, including the choice of fonts, colors, and wording. Alternatively, the Magna-Tiles® Packaging has acquired secondary meaning among relevant consumers throughout the United States.

39. Valtech's trade dress in the Magna-Tiles® Packaging has been and continues to be known throughout the United States as identifying and distinguishing Valtech's magnetic block products.

40. The conduct of Toys 4 USA described above constitutes infringement of Valtech's rights in the Magna-Tiles® Packaging trade dress and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

41. Valtech is informed and believes that Toys 4 USA's infringement of the Magna-Tiles® Packaging trade dress has been willful.

42. Valtech has been and will continue to be irreparably harmed and damaged by Toys 4 USA's conduct, and Valtech lacks an adequate remedy at law to compensate for this harm and damages.

PRAYER FOR RELIEF

WHEREFORE, Valtech prays for the following relief:

47. A finding that Defendants have engaged in unfair competition.
48. A finding that Defendants have infringed Valtech's trade dress.
49. An injunction permanently enjoining Defendants and their directors, officers, agents, servants, employees, and all other persons in active concert or privity or in participation with them, from:
 - a. directly or indirectly infringing or misappropriating Valtech's trade dress;
 - b. continuing to advertise, promote, sell, or offer to sell any products or services that infringe or misappropriate Valtech's trade dress;
 - c. continuing to advertise, promote, sell or offer to sell any products or packaging that are likely to cause consumer confusion or misunderstanding as to the source,

sponsorship, approval, or certification of Defendants' goods and/or as to the affiliation, connection, or association with or certification by Valtech;

- d. assisting, inducing, or aiding or abetting any other person or entity in engaging in any of the activities prohibited in subparagraphs a through c above.

50. An order requiring the impounding and destruction of all inventory and advertisements in the possession of Defendants that infringe Valtech's trade dress and all means of making the same.

51. An order requiring Defendants to file with the Court and serve on Valtech within thirty (30) days after service of the Court's order as herein prayed a report (or other form of proof) in writing under oath setting forth in detail the manner and form in which Defendants have complied with the Court's injunction.

52. A judgment entered for Valtech and against Defendants, jointly and severally, for all damages sustained by Valtech for Defendants' acts of trade-dress infringement, misappropriation, and unfair competition, including but not limited to Defendants' profits and costs, and attorneys' fees.

53. An accounting from Defendants for all gains, profits, and advantages derived from their acts of unfair competition, trade-dress infringement and/or other violations of the law as alleged herein.

54. An order requiring that all gains, profits, and advantages derived by Defendants from their acts of unfair competition, trade-dress infringement and/or other violations of the law as alleged herein, be deemed to be in constructive trust for the benefit of Valtech.

55. An order for such other, further, and different relief as the Court deems proper under the circumstances, including punitive damages if appropriate pursuant to the evidence of record.

JURY DEMAND

Valtech hereby demands a trial by jury on all matters and issues so triable.

Dated: December 9, 2014

Respectfully submitted,

By: /Patrick J. Arnold Jr./
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CERTIFICATE OF SERVICE

I, Patrick J. Arnold Jr., an attorney, hereby certify that on December 9, 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Patrick J. Arnold Jr.
Patrick J. Arnold Jr.